

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANTWAIN L. WILSON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ANTWAIN L. WILSON,

Respondent-Appellant.

UNPUBLISHED
February 17, 2004

No. 244083
Wayne Circuit Court
Family Division
LC No. 98-372548

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from an order of disposition entered following delinquency proceedings in which the trial court determined that respondent committed first-degree home invasion, MCL 750.110a(2)(b). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent contends that the evidence was insufficient to prove beyond a reasonable doubt that he was the person who committed the crime or that he acted with felonious intent.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom can be sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

The elements of the crime as charged are (1) the defendant (a) broke and entered a dwelling or (b) entered a dwelling without permission, (2) when the defendant broke and entered a dwelling or entered a dwelling without permission, he intended to commit a larceny therein,

and (3) when the defendant entered, was present in, or was leaving the dwelling, another person was lawfully present in the dwelling. MCL 750.110a(2)(b).

There was no dispute that someone broke and entered into the home of Rosemary Jones. Jones testified that when she entered the front door, she saw a shadow move. She approached her bedroom and saw a young man standing by her dresser and going through the drawers. He did not have permission to be there. He turned and saw her and she saw his face. He opened his mouth as if to speak and then ran out the side door. Jones stated that she did not know the young man's name, and her neighbor suggested that the young man may have been respondent. Upon seeing respondent in court, Jones identified him as the young man she had seen in her bedroom. Jones had seen respondent in the immediate neighborhood before. "Viewed most favorably to the prosecution, this evidence was sufficient to establish defendant's identity beyond a reasonable doubt. The credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide. We will not resolve it anew." *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

When the crime "is predicated upon an intent to commit a larceny inside the [dwelling], it is not necessary that the larceny be successful, only that the defendant had intended to commit a larceny when he broke and entered" or entered without permission. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993); MCL 750.110a(2). The intent to commit a larceny cannot be inferred from the breaking and entering alone. *People v Frost*, 148 Mich App 773, 776-777; 384 NW2d 790 (1985); *People v Palmer*, 42 Mich App 549, 552; 202 NW2d 536 (1972). However, the defendant's felonious intent may be proved from circumstantial evidence alone. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). It may be inferred from the nature, time, and place of defendant's acts before and during the breaking and entering, the manner in which the crime was committed, and by anything the defendant says. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001); *People v Hughes*, 27 Mich App 221, 222; 183 NW2d 383 (1970). Where the defendant's actions are commonplace or equivocal, or are as consistent with innocent activity as with criminal, objective evidence of the defendant's intent, i.e., evidence beyond inferences drawn from circumstantial evidence, is required. *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993).

Respondent entered another person's home without permission. While one may enter another person's home for reasons other than committing a crime, e.g., to seek shelter, to provide or obtain aid in a medical emergency, to rescue trapped occupants, etc., there was no evidence to suggest that such was the case here. To the contrary, respondent was found in the bedroom, going through drawers, and he fled immediately upon seeing the homeowner. Many of Jones' belongings were found stuffed inside pillowcases. Such evidence was sufficient to enable a rational factfinder to infer that respondent intended to commit a larceny.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens